

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

DONYALE JERREL HOLLOWAY

PETITIONER

VS.

CRIMINAL NO. 5:17-cr-1(DCB)
CIVIL NO. 5:18-cv-39(DCB)

UNITED STATES OF AMERICA

RESPONDENT

ORDER

This cause is before the Court on the Petitioner Donyale Jerrel Holloway ("Holloway")'s Motion to Vacate Pursuant to Title 28 U.S.C. § 2255¹ (**docket entry 160**), and on the United States of America's Motion for Affidavit from Movant's Counsel and to Extend Time to File Government's Response (**docket entry 161**).

On July 9, 2018, Holloway filed a Letter Motion (**docket entry 166**) to Dismiss his Motion to Vacate Pursuant to Title 28 U.S.C. § 2255. On July 10, 2018, he filed a Notice and Motion for Voluntary Dismissal of his § 2255 Motion (**docket entry 167**) and an identical Notice and Motion for Voluntary Dismissal of his § 2255 Motion (**docket entry 168**). On July 13, 2018, Holloway filed a Request for Transcripts of his March 15, 2017, bond hearing (**docket entry 169**).

Holloway's most recent motion, filed August 17, 2018, is a Motion to Strike (**docket entry 172**) his Motion for Voluntary

¹ Holloway's motion is titled "Motion for Reinstatement of Direct Appeal Right Pursuant to Title 28 U.S.C. § 2255." The motion is timely, since it was filed within one year after his conviction became final.

Dismissal of his Motion to Vacate, which the Court treats as a motion to strike docket entries 166, 167, and 168. The Court finds that the Government will not be prejudiced by the Motion to Strike, and the Court will grant the Petitioner's motion.

The Petitioner requests transcripts of his March 15, 2017, bond hearing. Although 28 U.S.C. § 753 provides for free transcripts in § 2255 proceedings, those are available only "if the trial judge or a circuit judge certifies that the suit or appeal is not frivolous and that the transcript is needed to decide the issue presented by the suit or appeal." 28 U.S.C. § 753(f). At this time, Holloway has not demonstrated that such a certification is appropriate. The motion for transcripts shall therefore be denied without prejudice.

Also before the Court is the Government's Motion for Affidavit from Movant's Counsel and to Extend Time to File Government's Response (**docket entry 161**). The Government's motion for affidavit and to extend time to respond shall be granted.

Accordingly,

IT IS HEREBY ORDERED that Holloway's Motion to Strike (**docket entry 172**) his Motions for Voluntary Dismissal of his Motion to Vacate, which the Court treats as a motion to strike docket entries 166, 167, and 168, is GRANTED, and **docket entries 166, 167, and 168** are DENIED AS MOOT;

FURTHER ORDERED that Holloway's Request for Transcripts of his March 15, 2017, bond hearing (**docket entry 169**) is DENIED WITHOUT

PREJUDICE;

FURTHER ORDERED that the Government's Motion for Affidavit from Movant's Counsel and to Extend Time to File Government's Response **(docket entry 161)** is GRANTED;

FURTHER ORDERED that the Government shall furnish a copy of Petitioner Holloway's Motion to Vacate Pursuant to Title 28 U.S.C. § 2255 to Holloway's former counsel, Thomas M. Fortner, who shall respond to the allegations made by Holloway in his § 2255 motion within thirty (30) days from the date of entry of this Order, by written affidavit, which shall be furnished to the Government and to the Petitioner;

FURTHER ORDERED that the Government shall file its Response to the Petitioner's Motion to Vacate Pursuant to Title 28 U.S.C. § 2255 no later than thirty (30) days after the submission of the above-referenced affidavit (a copy of said affidavit to be attached as an exhibit to the Government's Response).

SO ORDERED, this the 28th day of August, 2018.

/s/ David Bramlette
UNITED STATES DISTRICT JUDGE